

STATE OF MICHIGAN
COURT OF APPEALS

In re DAY, Minors.

UNPUBLISHED
December 18, 2014

No. 322124
Kent Circuit Court
Family Division
LC Nos. 12-051985-NA;
12-051986-NA

Before: RIORDAN, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication) and (g) (failure to provide proper care and custody). We affirm.

I. STATUTORY GROUNDS

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review for clear error a trial court's determination that a statutory ground has been proven by clear and convincing evidence. *Id.* "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009) (quotation marks omitted).

The trial court did not clearly err in finding a ground for termination existed. MCL 712A.19b(3)(c)(i) provides that a trial court may terminate parental rights if it finds, by clear and convincing evidence, that "[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order," and "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." Here, the trial court entered the initial dispositional order on August 27, 2012, and the initial termination hearing was held on October 25, 2013, before continuing over three separate dates and ultimately concluding on May 9, 2014. Thus, more than 182 days had elapsed since the issuance of the initial dispositional order.

A condition that led to adjudication was father's extensive history of domestic violence against his wife, the mother of the minor children.¹ Father admitted to this extensive history at his adjudication trial and further admitted that he had caused his wife physical harm on more than one occasion. He also admitted that the police responded to the marital home on several occasions in the months leading up to the filing of the petition, including on May 8, 2012—when he was arrested for aggravated domestic violence—and June 22, 2012—when he was arrested for violating a no-contact order. At the termination hearing, father admitted that the children were present during some of these episodes of domestic violence.

Father was referred to domestic violence counseling in October 2012. From that time until the time of termination, father participated in both individual and group counseling on a semi-consistent basis, although he missed several sessions because of his wife's untimely death and his own periods of incarceration. At the October 25, 2013 termination hearing, father's counselor indicated that while father had moments where he acknowledged being abusive and appeared to be making progress, there were other times when he tried to justify the reasons he used violence. Overall, father never truly identified himself as a perpetrator of domestic violence and never internalized what he was being taught. Moreover, while father seemed to understand that domestic violence was wrong generally, he did not understand the effects it had on his wife and children. Ultimately, father was unable to complete his group sessions because he was not "appropriate" in the group, his opinions about gender roles and the use of violence were not productive to the group setting, he played "devil's advocate," he failed to complete group tasks, and he missed several sessions due to being incarcerated. As of October 25, 2013, father's counselor opined that father was at risk of being violent—either physically or verbally/emotionally—in the future.

Father's failure to benefit from domestic violence counseling was demonstrated by his interactions with his children and his comments. For instance, during parenting time visits, father frequently raised his voice at the children and once even struck one of the children on the hand when she was trying to get down from a couch. Father further alluded to wanting to teach one of the children how to fight. On one occasion, when the parenting time supervisor attempted to redirect the children's behaviors in front of father, father responded by saying that if it were anyone else, he would have "slapped the change out of them" for interfering with his parental authority. At the October 25, 2013 termination hearing, the teacher of father's parent nurturing class testified that he and father were "at odds" about the use of physical violence or fear in parenting. Father disagreed with the teacher that spanking was not appropriate and instead said "sometimes you have to spank children." During the one session where the teacher addressed domestic violence, father was "silent" and did not participate.

Father's counselor acknowledged at the October 25, 2013 termination hearing that part of the reason father had failed to progress with counseling to that point was because he was still grieving over the death of his wife, which made it difficult to address domestic violence issues.

¹ The mother of the children was originally a respondent in this proceeding, but she died during the pendency of this case.

Because the counselor indicated that grief counseling would be beneficial, the trial court adjourned the termination hearing. Father thereafter received grief counseling from December 2013 through February 6, 2014, when he was arrested for possession of cocaine. Father failed to benefit from the counseling. In particular, the grief counselor indicated that she was not able to fully process a “grief timeline” with father, wherein the person creates “a more balanced view of the relationship which allows one to grieve the reality of the lost person as opposed to a fantasized version,” because that process became “an exercise in evading domestic violence.” Father’s timeline hardly mentioned his previous incidences of domestic violence, and those he did mention were minimized. Father continued to justify his violent actions by blaming his wife for being unfaithful. Aside from failing with his grief timeline, father made several concerning statements to the grief counselor indicative of his propensity for domestic violence. For instance, he told the counselor that it was “normal” in most marriages for a man to use some sort of violence against the woman. However, most women would not call the police. Therefore, “if you have the time to call the police, then I don’t need to be with you.” He also told the counselor that he did not understand why he was not allowed to “flex” on his daughters from time to time “to make them obey.” Father also threatened the counselor with a closed fist during a disagreement and stated that he did not want to argue, or else he might have to make his point known “by any means necessary.” Father acknowledged these referenced statements and others at the May 9, 2014 termination hearing, although he attempted to minimize them. Father agreed that he still had “some areas” to improve upon, but believed he could be better if he simply made better choices in women, thus demonstrating his continued inability to accept responsibility for his own actions.

The above facts demonstrate that while father generally complied with the recommended counseling services by participating in those services, he failed to adequately benefit. The totality of the evidence thus supported the trial court’s conclusion that father did not accomplish any meaningful change in domestic violence condition that led to adjudication. Moreover, given father’s overall lack of insight and failure to hold himself accountable or internalize what he had learned during the lengthy proceeding, there was no reasonable likelihood that he would be able to rectify his domestic violence issues within a reasonable time going forward. Thus, termination under MCL 712A.19b(3)(c)(i) was supported by clear and convincing evidence, and the trial court did not clearly err in so finding.

Because we have concluded that at least one ground for termination existed, we need not consider the additional ground on which termination was based. *In re HRC*, 286 Mich App at 461. Nevertheless, we find no clear error in the trial court’s determination that the evidence supported termination under MCL 712A.19b(3)(g). At the time of termination, father was unemployed, lacked suitable housing, and was incarcerated for possession of cocaine. He had failed to complete two different parenting classes and there were serious concerns with his parenting deficiencies. Thus, the trial court did not clearly err in finding that father had failed to provide proper care and custody and there was no reasonable expectation that he would be able to do so within a reasonable time considering the children’s ages.

II. BEST INTERESTS

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re*

Olive/Metts Minors, 297 Mich App 35, 40; 823 NW2d 144 (2012); see also MCL 712A.19b(5). The trial court’s determination that termination is in the child’s best interests must be supported by a preponderance of the evidence, and is reviewed for clear error. MCR 3.977(K); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). “[T]he focus at the best-interest stage” is on the child, not the parent. *In re Moss*, 301 Mich App at 87. The trial court should weigh all the evidence available to it in determining best interests, and may consider such factors as “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home[.]” *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted).

Although father has not specifically challenged the trial court’s best interests determination, we find that the record contained sufficient evidence to support, by a preponderance of the evidence, that termination of father’s parental rights was in the children’s best interests. The children had been in foster care for almost two years—which comprised almost one third of the older child’s life and almost half of the younger child’s life. At the time of termination, father had failed to adequately address any of the barriers to reunification. Moreover, it was evident that father would not likely be able to rectify those barriers within a reasonable time going forward. It was therefore “unlikely that the child[ren] could be returned to [father’s] home within the foreseeable future, if at all.” *In re Frey*, 297 Mich App 242, 249; 824 NW2d 569 (2012). In addition, the children were placed in a foster home where their needs were being met, and the foster parents had expressed an interest in adopting the children. Based on these facts, the trial court did not clearly err by finding that termination was in the children’s best interests. See *In re Olive/Metts Minors*, 297 Mich App at 42-43; *In re Frey*, 297 Mich App at 248-249.

Affirmed.

/s/ Michael J. Riordan
/s/ Jane M. Beckering
/s/ Mark T. Boonstra